



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 23, 1996

Ms. Detra Hill
Assistant City Attorney
Supervisor, Criminal and Police Division
City of Dallas
City Hall
Dallas, Texas 75201

OR96-0778

Dear Ms. Hill:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 35359.

The City of Dallas (the "city") through its police department received a request for certain information comprising the homicide file concerning a specific individual murdered in 1983. You have submitted representative samples from the file for our review¹ and you contend the requested information is excepted from required public disclosure under section 552.108 of the Government Code.

Section 552.108 excepts from disclosure:

(a) [a] record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . [and]

(b) [a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . .

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Gov't Code § 552.108. When applying section 552.108, this office distinguishes between cases that are still under active investigation and those that are closed. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. *See generally Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Once a case is closed, information may be withheld under section 552.108 only if its release "will unduly interfere with law enforcement or crime prevention." *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Attorney General Opinion MW-446 (1982); Open Records Decision Nos. 444 (1986), 434 (1986).

You state that the murder of the individual which occurred in 1983 remains unsolved at this time with no arrests having been made. If the prospect of prosecution is speculative or nebulous, the case cannot be considered an active case for purposes of withholding information under section 552.108. *See* Open Records Decision Nos. 408 (1984) at 7, 372 (1983) at 4. However, you represent to this office that the case continues to be in active status with leads being actively pursued and that the information, if released, would compromise the ongoing police investigation although we observe in the documents that you have submitted for review documented activity since 1988 is absent. Disputed questions of fact are not resolvable in the open records process, and therefore, the attorney general must rely on the representations of the governmental body or third parties. Open Records Decision Nos. 554 (1990), 552 (1990). We note that there is no statute of limitations on the presentation of evidence in pursuing a felony indictment of murder or manslaughter so that the fact that the murder took place in 1983 does not impact the status of the file. Crim. Proc. Code art. 12.01(1) (Vernon supp.1996). Consequently, where an incident involving allegedly criminal conduct, is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information which relates to the incident. Open Records Decision Nos. 372 (1983), 474 (1987). Your statement and representations that the documents reveal an active investigation² lead to the conclusion that the documents may be withheld.³

²We note, however, that section 552.108 is discretionary with the governmental entity asserting the exception. Open Records Decision No. 177 (1977). Therefore, a governmental body may choose to release information that is excepted from disclosure under this section. *Id.*, *see also* Gov't Code § 552.007 (governmental body may voluntarily disclose information unless prohibited by law); Open Records Decision No. 434 (1986) at 3 (prosecutor is ordinarily best judge of whether release of records would unduly interfere with law enforcement).

³We assume the first page of the offense/incident report has been released to the requestor and that the police department may withhold the information which is not generally found on the first page of the offense/incident report under section 552.108 of the Government Code. *See Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d at 187. We have enclosed for your reference an excerpt from Open Records Decision No. 127 (1976) at 3-4 which lists the types of information available to the public.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Janet I. Monteros', with a stylized flourish extending to the right.

Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/rho

Ref.: ID# 35359

Enclosures: Submitted documents
Excerpt from Open Records Decision No.127 (1976)

cc: Ms. Barbara Clancy
15550 Knoll Trail, Apt. 3303
Dallas, Texas 75205
(w/ Excerpt from Open Records Decision No. 127 (1976))